

respectfully submits that Araujo does not disclose two (2) servers, let alone one (1) server in a hub site and one (1) server in a central office for the purposes of replicating content data from a central server to a local server, but rather, a remote access server 11 that may communicate between a CPE or an end station. This is not the same as “a common link...over which the central content server...and at least one local content server communicate.”

Because the combination of Gerszberg and Araujo does not disclose, teach, or suggest the claimed invention, and because Gerszberg and Araujo is completely silent to all of the claimed invention as recited in independent Claim 1, the Office Action clearly fails to establish a *prima facie* case of obviousness (See MPEP §2143). For at least this reason, Claims 1-3, 6, 9, and 12-17 are allowable over the applied art, taken singularly or in combination. Claims 7, 8, 10, and 11, which are objected to as being dependant upon a rejected base claim, are also allowable. Withdrawal of the rejection and objection is respectfully requested.

Conclusion

It is well established that even if all elements of a claim are disclosed in the prior art, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to combine the teachings of the prior art to arrive at the claimed invention.¹ There is no motivation for one of ordinary skill in the art to modify Gerszberg with either Araujo to achieve the claimed invention as recited in independent Claim 1.

This modification would only be obvious when viewed in light of the disclosure of the Applicant’s patent application. The suggestion to combine the teachings of the prior art should come from the prior art, rather than from the Applicant.² “Monday morning quarterbacking is quite improper when resolving the question of obviousness.”³ The combination of the teachings of the prior art suggested by the Examiner is improper, absent a showing in the prior art that they can or should be combined. To do so would be an impermissible use of hindsight

¹ *In Re Regal*, 188 U.S.P.Q. 136,139 n.6 (C.C.P.A. 1975).

² *Orthopedic Equipment Co., Inc. v. United States*, 217 U.S.P.Q. 193,199 (C.A.F.C. 1983).

³ *Id.*

Attorney Docket No. 65632-0059 (00-VE24.35)

reconstruction from Applicant's disclosure.⁴ Because the prior art does not teach or suggest the desirability of the combination as suggested by the Office Action, the Office Action does not *properly establish a prima facie case of obviousness.*

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of the application is earnestly solicited.

All rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

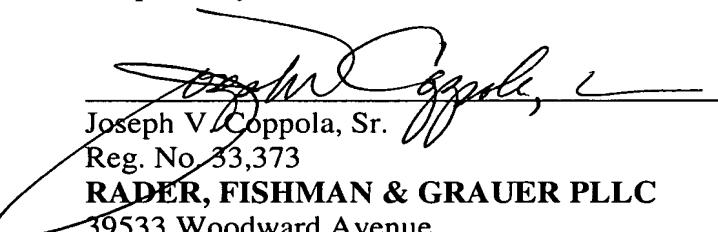
Any fees associated with the filing of this paper should be identified in any accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Respectfully submitted,

Date

3/28/2003


Joseph V. Coppola, Sr.
Reg. No. 33,373

RADER, FISHMAN & GRAUER PLLC
39533 Woodward Avenue
Suite 140
Bloomfield Hills, MI 48304
(248) 594-0650

R0177705.DOC

⁴ *In re Dembiczak*, 50 USPQ2d 1614 (Fed. Cir. 1999).